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NO. 85-1849

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1985

GLEN WALKER, et al.,

Petitioners,

vs.

STATE OF IOWA, et al.,

Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether a disappointed party may collaterally attack past state court judgments involving estate and trust matters in federal court.

2. Whether the due process of law requires that state court judges be elected rather than appointed by the governor from a list of nominees provided by a state nominating commission.

3. Whether due process is offended by transfer of a state court judge from one judicial district to another pursuant to established state procedures.

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STATEMENT OF THE CASE

In this pro se action, plaintiffs Benford and Glen Walker seek broad injunctive and declaratory relief against the defendants related to

various past and present state court proceedings concerning the estate of Florence Walker. According to the allegations of the complaint, an involuntary conservatorship petition was filed against Florence Walker in September 1975. Complaint, ¶ 15. The plaintiffs claim that the guardian ad litem appointed for Florence Walker in that proceeding improperly protected her interests. Complaint, ¶¶ 15, 16. An effort was made to vacate the resulting judgment that apparently led to the appointment of a conservator for Florence Walker. Complaint, ¶ 18. The plaintiffs received an adverse decision, which was appealed to the Iowa Court of Appeals. According to the plaintiffs, both the trial and appellate courts "refused to address issues involved

including the right to Florence Walker to due process of law." Complaint, ¶ 18.

In April 1978, Florence Walker died. The litigious atmosphere spawned a will contest, a proceeding in which plaintiffs claim that the deceased was deprived of representation and due process. Complaint, ¶ 21. The Iowa Supreme Court disposed of will contest proceedings on September 10, 1982. Complaint, ¶ 22.

Out of this nest of facts, plaintiffs let fly a series of constitutionally based attacks on the state court proceedings. First, they seek to relitigate various procedural issues in the proceedings that led to imposition of a conservatorship over the estate of Florence Walker and the probate of her

will. Complaint, ¶¶ 19, 21. Second, they claim that their right to vote has been infringed because they did not cast their ballots for any of the judges that sat over the various state trial court proceedings. Complaint, ¶¶ 26-31. Third, they object to the failure of the Iowa Supreme Court to grant discretionary review of a final opinion of the Court of Appeals, pursuant to Iowa Supreme Court Rule 8(c). Complaint, ¶ 37(3).

REASONS WHY THE WRIT SHOULD NOT BE GRANTED

1. Plaintiffs' effort to collaterally attack state court proceedings is without merit.

a. The nub of plaintiffs' complaint appears that they did not approve of the

handling of the estate of Florence Walker by the court appointed executors.

b. The plaintiffs had a full and fair opportunity to litigate their claims in state court. The proper method of seeking review of state court determinations of federal issues in a final state court judgment is to seek review through a petition for a writ of certiorari from this Court. Where the litigants in essence challenge a final state court judgment, a federal district court lacks subject matter jurisdiction. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).

2. The claim that due process requires that state court judges be elected by voters is frivolous. There is no due process right to vote for or against

judges who are not intended to serve in a representative capacity. See e.g., Oreoski v. Davis, 564 F. Supp. 526, 530 (M.D. Penn. 1983); Fehey v. Danigon, 405 F. Supp. 1386, 1391, n.6 (Rhode Island 1975); Wells v. Edwards, 347 F. Supp. 455 (M.D. La. 1972), aff'd. mem., 409 U.S. 1095 (1973); Haulshouser v. Scott, 335 F. Supp. 928, 931-32 (M.D.N.C. 1971), aff'd. mem., 409 U.S. 807 (1972). Similarly, any challenge to Iowa Supreme Court Rule 12(c), which allows transfer of state court judges from one district to another on right to vote grounds, is frivolous.

3. The plaintiffs claim that they were constitutionally entitled to discretionary review of an Iowa Court of Appeals' judgment in this case by the Iowa Supreme Court is without merit. In the

absence of invidious discrimination, there is no constitutional right to a hearing by the state's highest appellate court. James v. Reese, 546 F.2d 325, 328 (9th Cir. 1976).

CONCLUSION

For all of the above reasons, the petition for writ of certiorari in the above-captioned matter should be denied.

Respectfully submitted,

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